

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION Nos. 15403 to 15405 of 2006
With
SPECIAL CIVIL APPLICATION Nos. 16146 to 16156 of 2006
With
SPECIAL CIVIL APPLICATION Nos. 18395 to 18403 of 2006
With
SPECIAL CIVIL APPLICATION Nos. 18385 to 18394 of 2006
with
CIVIL APPLICATION Nos. 9107 to 9109 of 2006**

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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**VITHALBHAI HANSARAJBHAI RADADIYA & 11 - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)**

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Appearance :

M/S THAKKAR ASSOC. for Petitioner(s) : 1 - 12.
GOVERNMENT PLEADER for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 28/09/2006

COMMON ORAL JUDGMENT

1.As all matters are interconnected and common questions arise for consideration and hence, they are being considered by this common judgment.

2.I have heard the learned counsels appearing for petitioners Mr. S.N. Shelat with Mr. Champaner, Mr. P.M. Thakkar with Mr. Pahwa, Mr. N.D. Nanavati with Mr. Rawal, as well as Mr. Mihir Joshi, learned Additional Advocate General with Mr. Sunit Shah, learned Government Pleader and Mr. Mengdey, learned AGP for State Authorities, for final disposal. I have also heard Mr. Tushar Mehta for the applicant of Civil Application No. 9107 to 9109 of 2006.

3.Special Civil Application No. 15404 of 2006 and the petitions connected therewith is a group of petitions preferred by the Cooperative Societies through its Chairman, Sarpanchs of Gram

Panchayats situated in Lodhika Taluka for challenging the action of the State Government by the notification dated 24.07.2006, whereby the APMC Rajkot, which was formerly comprising of the market area of three revenue Taluks viz. Rajkot Taluka, Lodhika Taluka and Paddhari Taluka is divided into APMC Rajkot-Lodhika and APMC Paddhari and by the said notification, the order is also passed by the State Government for nominating various persons as per Schedule-A in APMC Rajkot-Lodhika and as per Schedule-II in APMC Paddhari.

4. Special Civil Application No. 15403 of 2006 and connected petitions are preferred by the elected member of APMC Rajkot for challenging the very notification of the State Government dated 24.07.2006 for division of the Market Committee and for nomination of various persons in APMC, Rajkot-Lodhika and APMC Paddhari.

5. Special Civil Application No. 15405 and connected petitions are preferred by various

Cooperative Societies through its Chairman/President and Sarpanchs of the Gram Panchayats situated in various villages of Paddhari Taluka of Rajkot District challenging the very notification of the State Government for division of APMC Rajkot into APMC Rajkot-Lodhika and APMC Paddhari and the nomination of certain persons as members in APMC Rajkot-Lodhika and APMC Paddhari.

6. The short facts relevant for the petitions are as under:

7. In January 2004, the election of the APMC Rajkot was held. However, it is the case of the petitioners that as the ruling party at the State Government level did not succeed in procuring the majority, the first meeting of the Market Committee so as to enable the duly elected member to assume the office, was not held and the said meeting was stayed at the dictate of the ruling political party. Thereafter, on 20.03.2004, the first meeting of

APMC Rajkot was held and the election of Chairman and Vice Chairman was held at the said meeting. The statutory term of the Market Committee as per the provisions of the Gujarat Agricultural Produce Markets Act, 1963 (hereinafter referred to as 'the Act'), is 4 years coupled with the power of extension of 1 year with the State Government. Therefore, if the period of 4 years is counted, the statutory term would expire on 19th March, 2008. It is the case of the petitioners in these petitions that the Chairman of the APMC Rajkot, is belonging to a Congress Party, the rival group and is also sitting MLA of the Jamkandorna constituency in Rajkot district. It is further the case of the petitioners that the Chairman of APMC Rajkot was also the Chairman of Rajkot District Cooperative Bank Ltd., a District level Cooperative Bank in Rajkot district. It is further the case of the petitioners in these petitions that when the election of Rajkot District Cooperative Bank was ensued, the President of the ruling political party of Rajkot and former MLA of the ruling

political party requested for sharing of the seats in the Managing Committee of the Bank to the Chairman of the APMC. However, as per the petitioners, since the Chairman of APMC, Rajkot refused to oblige, the Chairman of APMC Rajkot was threatened that the Government would take appropriate action against APMC Rajkot as well as against the District Cooperative Bank with a view to see that the elected persons are out by abusing the process of law. It is the case of the petitioners in these petitions that out of such ill-motive, there was initiation of the process for bifurcation of APMC Rajkot.

8. On 08.06.2006, a preliminary notification was published to declare the intention of the Government to bifurcate APMC Rajkot, creating separate Market Committees for each Taluka. At that stage, as per the petitioners, as an outcome of the political vendetta, the action was also initiated by the Director, Agricultural Marketing, under Section 47 of the Act. As per the petitioners, there are also various actions

taken in connection with the elections of the District Cooperative Bank, which is subject matter of the other petitions before this Court and as per petitioners, this Court in the said petitions has granted protection against the illegal exercise of power by the State Authorities at the dictate of the ruling political party. The petitioners had challenged the action of the State Government declaring its intention to bifurcate APMC, Rajkot. However, as final notification was yet to be published after consideration of the matter by the State Government, such petitions were withdrawn. It is further case of the petitioners in these petitions that in the process of consideration of the matter by the State Government for bifurcation of the Market Committee, 47 Gram Panchayats out of 57 Gram Panchayat of Paddhari Taluka objected to the division of the Market Committee. Even 24 Cooperative Societies of Paddhari Taluka out of 29 objected to the division of the Market Committee and there are two sales and purchase Union in Paddhari Taluka,

who objected to the bifurcation of the Market Committee. As per the petitioners, even for Lodhika Taluka, out of 38 Gram Panchayats, 35 Gram Panchayats objected to the bifurcation and 18 Cooperative Societies also objected bifurcation. For Rajkot Taluka, out of 94 Gram Panchayats, 57 Gram Panchayats objected to the bifurcation and 33 Cooperative Societies out of 38 Cooperative Societies objected to the bifurcation and one sales and purchase Union in Rajkot Taluka also objected to such bifurcation. As per the petitioners, inspite of such objections and resistance by more than majority of the persons who are concerned with the function of the Market Committee, as the State Government was to exercise the power with political vendetta, the decision is taken for bifurcation of the Market Committee, consequently resulting into ousting the elected member from power and inducting the persons who are political supporters of the ruling party, though they are not holding the basic qualification or eligibility to be appointed as

a member of the Market Committee. It is further case of the petitioners that out of the persons who are nominated by the State Government, though are belonging to the ruling party, are such persons who have contested the election and lost at the election of the market committee and the attempt on the part of the Government is to usurp the power by executive fiat and to induct the persons who are not having the mandate of voters. The contention of the petitioners on facts is that there is no bonafide purpose at all in exercising the power of bifurcation by the State Government and the same is nothing but an out product of the political vendetta on the part of the ruling party at the State level.

9. On the questions of law, the petitioners have raised various contentions inter alia that even for exercising of the power under Section 52 of the Act, it is required for the State Government to exercise the power objectively and at that stage, since the procedure required under Section 5 of declaration of the intention

inviting objections and its consideration thereof, are mandatory requirement. It was required for the State Government to exercise the power by holding necessary inquiry also, if required, and thereafter, only the decision could be taken. However, the submission on the part of the petitioners is that such mandatory procedure of consideration of the objections filed by the majority of the persons who were to be affected by the bifurcation are not considered nor any inquiry whatsoever is held by the State Government before issuing the final notification for bifurcation of APMC Rajkot. It is also the contention on the part of the petitioners that though there are powers with the State Government under Section 52 of the Act, such powers can be exercised, even if having quasi legislative character, by a procedure provided by the legislature and if such procedure is not followed, even such legislative action can be struck-down.

10. It was also submitted on behalf of the

petitioners that the intention of the State Government is apparent from the simultaneous conduct of exercise of the executive power in the very notification by excluding the elected representative of the dissolved market committee and by nominated persons, who are politically supporters of the ruling party. It was submitted that as per the requirement of Section 54, and more particularly Section 54(2) of the Act, there is a legislative mandate to consider and to nominate the elected member of the dissolved market committee as far as practicable and neither in the notification nor in the record of the Government, there is consideration of such aspects by the Government. It was also submitted on behalf of the petitioners that it is only when the Government finds that it is not practicable to nominate the elected member of the dissolved market committee then only the other persons can be nominated. However, such persons who are to be nominated must hold the basic eligibility criteria for being elected and they should not be the persons who had lost at

the election of the market committee or who are not even holding the general license or who are only supporters of the ruling political party having no other qualification whatsoever. It has been submitted on behalf of the petitioners that the persons who are nominated includes the supporters of the ruling party and one of the person is an ex-MLA of the ruling political party and therefore, it was submitted that the aforesaid totality of the circumstance goes to show that the power is not exercised with any bonafide intention but is with malafide purpose of ousting the elected member belonging to opposite political party and to usurp the power by executive fiat and to induct the persons who are sympathizer or supporter of the ruling political party. Therefore, it was submitted that the whole exercise of bifurcation and of nomination is illegal and deserves to be struck-down by this Court.

11. On behalf of the State Government and other State Authorities, affidavit-in-reply is filed

by Shri A.M. Patel, Deputy Secretary, Agricultural and Cooperation Department. In para 6 of the affidavit-in-reply, it has been stated that the notification dated 08.06.2006 inviting suggestions and objections as contemplated under Section 5 of the Act qua the said bifurcation was declared and therefore, the requirement under Section 5 of the Act was fulfilled. It has been further stated that the State Government has in exercise of the powers under Section 52 of the Act, vide notification dated 24.07.2006, resolved to bifurcate the earlier Rajkot Agricultural Produce Market Committee into APMC Rajkot and APMC Paddhari. In para 8 of the affidavit in reply, it has been stated that it is not correct on the part of the petitioner to contend that the State Government has exercised the power under Section 52 of the Act with malafide intention and with extraneous motives of capturing the power of the earlier Rajkot APMC. It is further stated that it is not correct that such exercise is carried out with ulterior motive or those who have been

defeated by the electorate to capture power in the market by misusing the official machinery. In para 13 of the affidavit-in-reply, it has been stated that if the State Government forms an opinion that it is practicable to nominate the members of the market committee in the newly constituted market committee, then the State Government is required to appoint such persons as members of newly constituted market committee. It is further stated that as serious complaints are received by the Directors of very serious financial irregularities, alleged to have been committed by the members and office bearers of the dissolved market committee and pursuant to the said complaint, the Director has instructed the Deputy Director and the District Registrar, Rajkot for looking into the said matter and as the District Registrar has initiated inquiry under Section 47 read with Section 44 of the Act, and also submitted his preliminary report dated 14.06.2006 to the Director, according to which, it is found that there is substance in the complaint made against

the members of the dissolved market committee. It is further stated that one member of the dissolved market committee viz. Popatbhai Tolia, who was nominated member of the Rajkot APMC, has also submitted his complaint against the earlier body on various occasions to the State Government as well as to the Director and other authorities and the tenor of the affidavit shows that as serious complaints are received against the elected members of the dissolved market committee and is being investigated and as there is also preliminary report, the Government has decided not to nominate such persons as members of the newly constituted market committee. In paragraph 15 of the affidavit-in-reply, it has been stated that the answering respondent has nominated the members of the newly constituted market committee subject to their fulfilling the criteria for such nomination and if after due scrutiny it is found by the respondent that any of the nominated member does not qualify for being nominated as such will be replaced by the qualified person in due process. In support of

the affidavit-in-reply, which is filed on 02.08.2006, the complaint received against the elected member of the APMC Rajkot, the orders passed under Section 44 of the Act, the preliminary report etc. are produced.

12.The contention as sought to be canvassed on behalf of the respondent State Authorities is that when the exercise of the power is as quasi legislative action, the scope of judicial scrutiny would be limited and the Court may not be in a position to examine the adequacy of the material before the State Government while exercising the power, which is having the character of quasi legislative action. It was submitted that it is not a matter where the State Government has exercised the power of bifurcation without there being any material whatsoever. The allegations of malafide are without there being any basis and therefore, the same may not be taken into consideration and the contention on the part of the State Authority is that the action by the State

Government of bifurcation and of excluding the nomination of the elected member of the dissolved market committee and of nomination of other persons as per the notification is legal and valid.

13. Before the Court proceeds to consider the matter further, certain developments pending the petition deserves to be recorded and the same inter alia is that when the matters came to be considered for the first time on 28.07.2006, this Court had passed the following order:

“2. The learned Counsel appearing for the petitioners undertake that one-page petition for removal office objections shall be filed latest by Monday, the 31st July, 2006 and they also pray that they may be permitted to implead the parties against whom the allegations of political malafides are made. Permission granted.

3. Heard Mr. Shelat, learned Counsel appearing with Mr. Champaneri, learned Counsel, Mr. Prakash Thakkar, learned Counsel appearing with Mr. Pahwa, learned Counsel, Mr. Nanavati, learned Counsel appearing with Mr. Samir Bundela, learned Counsel for Mr. H. P. Raval, and Mr. Mihir Joshi, learned Additional Advocate General appearing with Mr. Mengdey, learned AGP.

4. **Notice** returnable on 3.8.2006.

Mr.Joshi, learned Additional Advocate General seeks time to file reply on behalf of the respondent State. **S 0 to 3.8.2006.**

5. The learned Counsel appearing for the petitioners press for ad-interim relief at this stage, restraining the nominated members from functioning.

6. I would have recorded the reasons for considering the matter for ad-interim relief, however, Mr.Joshi, learned Additional Advocate General has not invited the reasons and, therefore, I find it proper not to record the reasons at this stage. Suffice it to say that until further orders, the nominated members of the Market Committee in question shall not be permitted to assume office and the Administrator, who is holding the charge, as on today, shall continue to hold the charge of the Market Committee."

14. Thereafter, the State Government filed the reply. Not only that but the original file was made available to the Court for perusal and at the admission stage, after hearing the learned counsel appearing for both the sides at length, this Court had on 11.08.2006, passed the following order:

"1. Upon hearing Mr. Shelat with Mr. Champaneri, Mr. P.M. Thakkar with Mr. Pahwa, Mr. N.D. Nanavati with Mr. Rawal for the petitioners and Mr. Mihir Joshi, learned Additional Advocate General with Mr. Mengdey, learned AGP on behalf of the State

Authorities and Mr. Ketan Shah for the applicants of Civil Application Nos. 9107 of 2006, 9108 of 2006 and 9109 of 2006, it prima facie appears that the purported exercise of the power is under Section 52 of the Gujarat Agricultural Produce Market Act (hereinafter referred to as the 'the Act') for division of APMC Rajkot into APMC Rajkot-Lodhika and APMC Padadhari. It does appear that the exercise of the power by the State Government is essentially a subordinate legislative function and therefore, as per the settled legal position, one of the judicial scrutiny shall be restricted to the procedure to be followed for such legislative action as provided in the statute itself. If Section 5 is read with Section 6 of the Act, it provides for declaration of the intention of inviting objections and consideration of the suggestions and also inquiry as may be necessary, but all by the State Government. It prima facie appears that in the affidavit-in-reply, except bare statement that all objections including the objections and suggestions of the local authority were duly considered before issuing the final notification, no other details are mentioned. There are serious allegations of political malafides and as there are allegations that the action is tainted with the political malafides, this Court had directed to the State Government to make available the original file and the record of the original file prima facie shows that the proposal for division of APMC Rajkot-Lodhika and APMC Padadhari was moved long back and initially, in the month of March 1999, the decision was taken not to divide the Market Committee. Thereafter, it appears that once again, the matter was considered by the State Government and on 19.06.2002, the decision was taken to close the division for the present of the Market Committee. Not only that, but thereafter, the term of the elected Body as then was

holding the charge was extended by the State Government and the election also came to be declared. It is not in dispute that the last election was held somewhere in the year 2004 and the statutory term of the elected Body of APMC Rajkot comprising of three talukas viz. Rajkot, Lodhika and Padadhari was to expire in the year 2008, had the division not been there.

2. It prima facie appears that again somewhere in the month of March 2006, at the instance of Shri Haribhai Patel, Member of Parliament, Porbandar Constituency, the State Government once again considered the matter as the letter was addressed by the said MP to the State Government and the intention for division was declared thereafter. It is the contention of the petitioners that out of 57 Gram Panchayat of Padadhari Taluka, 47 Gram Panchayat opposed to the division. It is also the contention of the petitioners that out of 29 Cooperative Societies of Padadhari Taluka, 24 objected to the division. It is also the contention of the petitioners that for Lodhika Taluka, out of 38 Gram Panchayats, 25 objected to the division and out of 18 Cooperative Societies, all objected. Similarly, for Rajkot Taluka, out of 94 Gram Panchayats, 57 objected to the division and out of 38 Cooperative Societies, 37 objected to the division and one Sales and Purchase Union of Rajkot Taluka also objected to the division.

3. The original file shows that the objections were filed. However, the file also shows that many persons, including the Gram Panchayat and Cooperative Societies supported the division. To what extent it may have the bearing to the decision or whether the decision of the Government would be vitiated on account of not accepting the objections would be an aspect, which may be considered by the Court at the time of final

disposal. However, prima facie it appears that the exercise of power for division is not without consideration of the material on record. If the State Government has exercised the power for division of Market Committee after the aforesaid consideration, prima facie, it cannot be said that the exercise of power for division of the Market Committee of separating the Padadhari Taluka from Rajkot-Lodhika is without following the statutory requirement for such legislative action. It is true that the original file of the State Government does contain the letter of the Shri Haribhai Patel, Member of Parliament, Porbandar constituency dated 01.02.2006, the letter of Hon'ble Chief Minister dated 23.02.2006, forwarding of the letter of the said Member of Parliament to the Secretary of the Co-operation Department, the forwarding letter of the concerned Minister for Cooperation Department dated 01.03.2006, the letter dated 01.02.2006 of Shri Mohanbhai Kandaria, MLA, 14-Tankara-Padadhari Constituency, the copy of the letter dated 30.06.2006 of Shri Vithalbhai H. Radadia, who is one of the petitioner herein and MLA of Dhoraji-Jamkandorna, addressed to Hon'ble Governor of the Gujarat State objecting to the division of the Market Committee and the letter dated 24.07.2006 of the concerned Minister for Cooperation Department for appointment of certain persons as nominated member of the new Market Committee. Therefore, it prima facie appears that even if the action for division is moved or supported by the persons belonging to the ruling party in the State or objected by one of the petitioner belonging to the political party in opposition in the State, it is not a matter where the exercise of the power by the State Government for division of the Market Committee is without there being any material for division at all. Whether there was sufficient material for division or the effect of majority objecting

to division or only political consideration etc., are the aspects, which can finally be concluded at the time of final hearing of the matters.

4. Even if the exercise of power is for division of the Market Committee, it prima facie appears as per the scheme of Section 54(2) of the Act that such power is not to be exercised for removal of the elected representatives or elected members of the Market Committee but, is to be exercised for providing separating markets or separate Market Committee to a particular Taluka or otherwise for betterment of facilities to the agriculturists of the area. The aforesaid intention of the legislature is reflected by the language of Section 54 itself and more particularly, sub-section (2), which reads as under:

“A new market committee constituted under the provisions of sub-section (1) shall consist of members nominated by the State Government and its Chairman and Vice-Chairman shall be elected in the manner provided in this Act. The member shall, so far as in the opinion of the State Government may be practicable, be persons, who were members of the dissolved market committee”

Therefore, when the power for division of the Market Committee is exercised during the term of the Market Committee, the legislature has shown the intention that the State Government may nominate the members of the dissolved Market Committee and the reason is that the members of the dissolved Market Committee, are duly elected representatives of the voters or the constituency of the Market Committee, whose statutory term otherwise is not over.

5. If the exercise of power for division of the Market Committee is to be read as for removal of the elected representative or for usurpation of the power by nominating other persons without considering and accommodating the elected members of Market Committee, then such an exercise prima facie would not only be unreasonable and arbitrary on the face of it, but would frustrate the object of the Act to be achieved by the division with the maintenance of the democratic principles of governing of such Market Committee through the elected representatives. The dissolution of the Market Committee by division cannot be read as an entry to assume the power without facing the electorate or the voters concerned. The person who are otherwise not qualified to be elected, under no circumstances, can be considered but the first and the foremost requirement in the matter when division of the Market Committee is to take place or has taken place on account of the exercise of power under Section 52 of the Act by the Government would be to ensure that the elected representative of the dissolved Market Committee are duly considered and accommodated unless there are extraordinary circumstances for making departure to the normal rule and for nullifying or diluting the intention of the legislature.

6. Mr. Shelat, learned counsel appearing for the petitioners relied upon the decision of the Apex Court in the case of the **In re, Presidential Election, 1974 reported at AIR 1974 SC 1682** for contending that the word 'as far as practicable' has the relevance for accommodating the number of representations in comparison to the number of voters. He also relied upon the another decision of the Apex Court in the case of **N.K. Chauhan & Ors. Vs. State of Gujarat & Ors. reported at AIR 1977 SC 251** for

contending that sincere effort should be made for giving effect to the provision of Section and the word 'as far as practicable' does not include unpalatable or it cannot be equated with the equitable consideration or reasonableness of the action. He also relied upon the decision reported at **43(2) All England Reporter 781** for contending that the practicable does not mean the equitable or reasonable or fair and the submission of Mr. Shelat is that as per the dictionary meaning, the word practicable means, which can be put into practise.

7. Mr. Joshi, learned Addl. Advocate General, contended inter alia that the word practicable cannot be given a particular truncated meaning but, has to be given effect in context to the language of section and the scheme of the Act. He submitted that the legislature has used the language 'as may be practicable in the opinion of the State Government' and therefore, he attempted to submit that the legislature has not used the mandate but, has left the discretion to the State Government and therefore, in his submission, if there is material to form an opinion that it is not practicable to nominate the members of the dissolved Market Committee, it is open to the State Government to drop the members of the dissolved Market Committee. He relied upon the averments made in the affidavit-in-reply for contending that as against the present Body of the Market Committee, there were serious complaints received by the State Government and the Director of Agricultural Marketing and Rural Finance and therefore, they are not considered.

8. During the course of the hearing on the said aspects, if the record of the original file was considered, the file did not contain any formation of the opinion by the State Government that it was not practicable to nominate the members of the dissolved

Market Committee nor any material is contained in the file of division of the Market Committee. Mr. Joshi, learned Addl. Advocate General submitted that there is another file. But such another file appears to have been prepared on 08.08.2006, containing the complaint and investigation into the complaint by the Deputy Director and the District Registrar of the Rajkot and such complaint, as such are from the applicant of Civil Application Nos. 9107 of 2006, 9108 of 2006 and 9109 of 2006.

9. It deserves to be recorded that the date of the decision is 24.07.2006 of the State Government. This Court on 28.07.2006, after hearing the learned Addl. Advocate General, had passed the order of issuing notice and of granting ad-interim order and the so-called material of the file is incorporated in the file on 08.08.2006. Further, for exercise of power under Section 52 read with Section 54(2) of the Act, the approval/orders upto the level of the concerned Minister is to be obtained but the another file shown is moved upto the level of Dy. Secretary, Cooperation Department. Therefore, prima facie, it can be said as the material not before the State Government at the time when the decision was taken on 24.07.2006.

10. Even if the question of exercise of powers under Section 54(2) of the Act is considered, in light of the prima facie observations made by this Court hereinabove, it does prima facie appear that as a normal rule, the attempt deserves to be made by the State Government for nominating the elected representative of the dissolved Market committee in a new Market Committee, which is formed on account of the division, provided the statutory term of such elected representative is not over. While forming such opinion, it is required for the State Government to keep in mind the intention of

the legislature of governing of the Market Committee through the elected representative and to keep in mind that the members of the Market Committee were inducted into the power after getting mandate of the voters and they cannot be unseated under the guise of the division of the Market Committee, nor the exercise of power for division is as a substitute of removal of such members from power as by way of penal action. If the members of the dissolved Market committee have become incapable to perform the duties or none of the members are representing the area or that the number of persons representing the area are less than the minimum requisite members and others for constitution of the Market Committee, it may be circumstance, which may leave room to the State Government for nominating other persons in addition to the members of the dissolved Market Committee for constituting the new Market Committee. But, such in no case can be read as authorising the State Government to form an opinion merely because the members of the dissolved Market Committee are belonging to another or rival political parties or are not sympathizers or convenient to the party in power at the State level. If such circumstances are to weigh with the State Government for exercise of the power, it would not only frustrate the basic intention of the legislature but, may result into non-discharging of the pious obligations, which the legislature has imposed upon the State Government to achieve the objects and purposes of the Act. If exercise of power under Section 52 read with Section 54(2) of the Act is to achieve goal of removal of elected representatives belonging to another or rival political parties or group or to induct the persons who are comfortable or convenient to the persons exercising such powers, then such an action prima facie can be said as outside the scope and ambit of powers of the State Government under Section 52 read with

Section 54(2) of the Act.

11. I would have considered the matter further even in the light of the nomination of the members so nominated by the concerned Minister for Cooperation on the same day without forming of the opinion as to whether it is practicable to nominate the members of the dissolved Market committee and I would have also considered the sanctity of the stand of the State Government in the affidavit-in-reply for showing the material without their being its consideration by the competent authority of the State Government or without formation of any opinion for such purpose, however, at that stage, Mr. Joshi, learned Addl. Advocate General, under the instructions of the State Government has declared before the Court that the State Government is inclined to reconsider the issue of nomination of members of the dissolved Market Committee in light of the provisions of Section 54(2) of the Act and therefore, I find that it may not be necessary for this Court at this stage to examine the aspects of allegations of political mamafides in not nominating the members of the dissolved Market Committee and nominating the persons who are supported by the party in power, and its consequential effect.

12. The learned counsel appearing for both the sides have made strenuous effort to contend that there is no power for appointment of administrator even for stopgap arrangement by the State Government and it was further contended on behalf of the petitioners that section 24 is invoked for such purpose, which does not provide for appointment of administrator whereas Mr. Joshi, learned Addl. Advocate General submitted that there are enabling powers with the State Government for making interim arrangement, so that hiatus may not be created.

13. Prima facie, I find that when the State Government is inclined to reconsider the matter for nomination of the members of the dissolved Market Committee in context to the provisions of Section 54(2) of the Act and when such an exercise can be ordered to be completed within some stipulated time limit and till then, if the District Registrar who is holding the charge as administrator can be continued to look after the day to day administration of the Market committee. Even otherwise also, until the nominated Body assumes the office, somebody has to hold the charge and the District Registrar who is otherwise also holding the office of the Deputy Director can be allowed to continue as a stopgap arrangement for some time until the decision is taken by the State Government and is placed on record. Thereafter, the matter can be considered for entrustment of the charge to such nominated Committee if the Court finds otherwise in accordance with law.

14. In view of the above, I am inclined to pass the following order.

15. Rule. By interim order, the impugned notification of the State Government, so far as it relates to the nomination of the persons in APMC Rajkot-Lodhika and APMC Padadhari, shall remain stayed with the further direction that the State Government shall reconsider the matter as per the declaration made by this Court and also keep in view the prima facie observations made before this Court hearinabove, and shall place its decision within a period of four weeks from today, i.e. on or before 11th September, 2006. The matter shall be considered further for modification of the order, if required and till then, the District Registrar and the Deputy Director, Agriculture and Marketing, Rajkot shall continue to hold the charge of the Market

Committee/s for looking after its routine and day to day functions. The earlier ad interim order shall stand modified by the present interim order."

15. Therefore, in pursuance to the order dated 11.08.2006 passed by this Court, the State Government was directed to reconsider the matter as per the declaration made by this Court and was further directed to keep in view the prima facie observations made by this Court in the order dated 11.08.2006 and was directed to place its decision within a period of 4 weeks, i.e. on or before 11.09.2006. It was also observed by the Court that the matter shall be considered further for modification of the order, if required and till then, the District Registrar and the Deputy Director, Agriculture and Marketing, Rajkot was directed to continue to hold the charge of the market committee for looking after its routine and day to day functions.

16. Thereafter, as per the State Government in compliance to the order passed by this Court,

the matter is considered and the additional affidavit-in-reply is filed by Shri Devendra R. Trivedi, Under Secretary, Cooperation Department on 11.09.2006 in paragraph 2, it has been mentioned inter alia as under:

“Pursuant to the aforesaid direction, the answering respondent has reconsidered the matter as per the directions of the Hon'ble Court and has arrived at a conclusion that in view of the fact that there are serious complaints of financial irregularity received by the Director and that pursuant to such complaints, the Director has also initiated the inquiry against the entire body of the dissolved market committee, it is not practicable to nominate the members of the dissolved market committee in the governing body of the newly constituted market committees. Annexed hereto and marked Annexure-RI is the copy of the decision of the answering respondent dated 05.09.2006.”

If Annexure-RI is considered, it is not the decision of the State Government, but is a letter dated 05.09.2006 by Deputy Secretary of the State Government Shri A.M. Patel, to the Government Pleader, Gujarat High Court in which there is communication that the order of this Court dated 11.08.2006 is considered and the procedure as required under Section 54 of the

Act for bifurcation of the market committee is followed and for nomination of member of the dissolved market committee under Section 54(2) of the Act as there are serious irregularities and financial illegalities, which are narrated in item Nos. 1 to 6 and as the investigation is going on and in view of the process of investigation of the complaint against the members of the dissolved market committee, it would not be in the interest of administration to include such persons as nominated member and it is found that no change should be made in the nomination and the members who are nominated as per the notification dated 24.07.2006 are to be continued as per the decision of the State Government.

15.As such, the communication by the Deputy Secretary to the Government Pleader is not sufficient compliance to the order passed by this Court. However, with a view to see hat whether Government has actually taken any decision or not and if yes, what is the contents

thereof, the original file was called for and the same is made available to the Court for perusal by the learned AGP. The same further shows that in the noting prepared on 23.08.2006 by the Deputy Secretary, there is no express reference of the observations made by this Court in its order dated 11.08.2006, but only the reference of the order is made and the copy of the order is produced. It appears that after the note was submitted by the Deputy Secretary, Shri A.M. Patel, there is further discussion, which is recorded as per the note dated 02.09.2006. Even in the discussion, there is no specific reference to the observations made for the scope and ambit of the power of the State Government under Section 54(2) of the Act, except the reference to the copy of the order. The whole discussion is on the basis that in view of the complaint against the members of the dissolved market committee, whether they should be nominated or not. It appears that in the discussion, it is recorded that keeping in view the investigation in connection with the

compliant under Section 44 of the Act against the members of the dissolved market committee, it is not in the interest of the administration of making change in the earlier decision and the body nominated earlier and the it is opined that the body nominated earlier be continued. The aforesaid noting of the discussions are ultimately approved by the State Government upto the level of the concerned minister for Corporation Department.

16.This Court when passed the order on 11.08.2006, inter alia observed at para 3 as under:

“prima facie it appears that the exercise of power for division is not without consideration of the material on record. If the State Government has exercised the power for division of Market Committee after the aforesaid consideration, prima facie, it cannot be said that the exercise of power for division of the Market Committee of separating the Padadhari Taluka from Rajkot-Lodhika is without following the statutory requirement for such legislative action.”

This Court in para 3, after recording the various correspondences of the MLA & MPs,

which were reflected in the file, had further observed as under :

“Therefore, it prima facie appears that even if the action for division is moved or supported by the persons belonging to the ruling party in the State or objected by one of the petitioner belonging to the political party in opposition in the State, it is not a matter where the exercise of the power by the State Government for division of the Market Committee is without there being any material for division at all. Whether there was sufficient material for division or the effect of majority objecting to division or only political consideration etc., are the aspects, which can finally be concluded at the time of final hearing”

This Court would have considered the matter further on the legality and validity of the exercise of the power by the State Government under Section 52 of the Act. However, the learned counsel appearing on behalf of the concerned petitioners viz. Mr. Shelat, Mr.Thakkar, Mr. Nanavati, declared before the Court under the instructions of their respective clients that if this Court is inclined to consider the matter for ordering

election of the newly constituted market committee, which will ultimately reflect the will of the electorate and if thereby the elected members are to assume the office, all the petitioners may not press the challenge to the action of bifurcation, though as per the petitioners, as contended in the petition, the action is with malafide intention of ousting the elected body of the APMC Rajkot and to capture the power by executive fiat.

17.The response on the part of the State Government through the learned Additional Advocate General and Government Pleader is that the State Government is not agreeable for holding of the election of newly constituted market committee.

18.Therefore, the first aspect which deserves to be considered is whether the matter should be decided for examining the challenge of bifurcation or the Court may continue with the action of bifurcation without examining the

legality and validity of the action on the part of the State Government at this stage and to consider the matter for holding of the election. As the aforesaid aspect is correlated with the second question for holding the power of newly constituted market committee including by nomination under Section 54(2) of the Act, it will also simultaneously be required to be considered as to whether the exercise of power by the State Government under Section 54(2) of the Act is justified or not, more particularly, in view of the stand declared on behalf of the State Government for not to agree for allowing of the election to be held for the newly constituted market committee.

19. In any democracy, election by the people and for the people is the real spirit and can rather be described as a soul to survive the democracy and democratic principles in any State or institutions or local body upto the grass root level. No executive in democracy can be heard to say that the process of administration would

continue by executive fiat and let the election be not held, if no convenient atmosphere to hold the election. The systematic mechanism of holding power through the electorate that too within the time bound programme is the gist of governance conceived and expressly provided in all statutes governing the constitution, administration, reconstitution and rather perpetual succession of the local bodies or statutory bodies. The normal principle or the normal rule would be the holding of power or of governance of statutory body through its electorate and the role of executives or rather the supervisory authority exercising the executive power may follow only if certain contingencies have resulted. Such a situation would be only as an interim or a stop gap arrangement, like a caretaker. The one who is holding the position as caretaker cannot be heard to say that let there not be a regular election, but a caretaker to remain in power in succession or for indefinite period. If such an attempt is countenanced by the Court, it would

leave room to play fraud with the democratic principles. The Court in the system of democracy would be zealous to see that the democratic principles are upheld and the power are to remain with those who are genuinely entitled to hold due to the mandate of electorate concerned.

20.As such, keeping in view the aforesaid mechanism in the Act itself even while passing the order dated 11.08.2006, this Court in the matter of exercise of power under Section 54(2) inter alia had observed as under :

“the legislature has shown the intention that the State Government may nominate the members of the dissolved Market Committee and the reason is that the members of the dissolved Market Committee, are duly elected representatives of the voters or the constituency of the Market Committee, whose statutory term otherwise is not over.”

It was further observed at para 5 as under :

“If the exercise of power for division of the Market Committee is to be read as for removal of the elected representative or for usurpation of the power by nominating other persons without considering and accommodating the elected members of Market Committee, then such an exercise prima facie would not only be unreasonable and arbitrary

on the face of it, but would frustrate the object of the Act to be achieved by the division with the maintenance of the democratic principles of governing of such Market Committee through the elected representatives. The dissolution of the Market Committee by division cannot be read as an entry to assume the power without facing the electorate or the voters concerned. The person who are otherwise not qualified to be elected, under no circumstances, can be considered but the first and the foremost requirement in the matter when division of the Market Committee is to take place or has taken place on account of the exercise of power under Section 52 of the Act by the Government would be to ensure that the elected representative of the dissolved Market Committee are duly considered and accommodated unless there are extraordinary circumstances for making departure to the normal rule and for nullifying or diluting the intention of the legislature."

It was further observed by the Court inter alia at para 10 as under:

"Even if the question of exercise of powers under Section 54(2) of the Act is considered, in light of the prima facie observations made by this Court hereinabove, it does prima facie appear that as a normal rule, the attempt deserves to be made by the State Government for nominating the elected representative of the dissolved Market committee in a new Market Committee, which is formed on account of the division, provided the statutory term of such elected representative is not over. While forming such opinion, it is required for the State Government to keep in mind the intention of the legislature of governing of the Market

Committee through the elected representative and to keep in mind that the members of the Market Committee were inducted into the power after getting mandate of the voters and they cannot be unseated under the guise of the division of the Market Committee, nor the exercise of power for division is as a substitute of removal of such members from power as by way of penal action. If the members of the dissolved Market committee have become incapable to perform the duties or none of the members are representing the area or that the number of persons representing the area are less than the minimum requisite members and others for constitution of the Market Committee, it may be circumstance, which may leave room to the State Government for nominating other persons in addition to the members of the dissolved Market Committee for constituting the new Market Committee. But, such in no case can be read as authorising the State Government to form an opinion merely because the members of the dissolved Market Committee are belonging to another or rival political parties or are not sympathizers or convenient to the party in power at the State level. If such circumstances are to weigh with the State Government for exercise of the power, it would not only frustrate the basic intention of the legislature but, may result into non-discharging of the pious obligations, which the legislature has imposed upon the State Government to achieve the objects and purposes of the Act. If exercise of power under Section 52 read with Section 54(2) of the Act is to achieve goal of removal of elected representatives belonging to another or rival political parties or group or to induct the persons who are comfortable or convenient to the persons exercising such powers, then such an action prima facie can be said as outside the scope and ambit of powers of the State Government under Section 52 read with Section 54(2) of the Act."

21. After the order passed by this Court on 11.08.2006, neither from the affidavit-in-reply, nor from the original file of the State Government, it appears that the aforesaid observations are considered at any level. Neither in the note prepared by the officer nor in the discussion, which is also recorded, there is any whisper whatsoever to the aforesaid observations made by this Court.

22. It appears that the attempt on the part of the State Government is to reiterate its own stand that there are large number of financial illegalities or irregularities in connection with which the investigation is going on and, therefore, it is not in the interest of the administration to nominate such persons as the members of the Market Committee. If the material placed on record and the original file namely; the noting and the recording of the discussion referred to hereinabove are considered, there is ex-facie non-application of

mind qua the observations made by this Court in its order dated 11.8.2006 pursuant to which the direction was given to reconsider the issue for exercise of the power under Section 54(2) of the Act after taking into consideration the observations made by this Court and the declaration made in the order. Therefore, the subsequent decision which is said to have been taken after the order dated 11.8.2006 is without any proper application of mind and if the observations made by this Court are not considered by the State Government, nor the reasons are mentioned for non-consideration of such observations, it can be said that the exercise of power under Section 54(2) for reconsideration of the issue of nomination of the members of the dissolved Market Committee is not only without proper application of mind, but is in contravention to the order dated 11.8.2006 passed by this Court.

23.It deserves to be recorded that the exercise of power by the State Government under Section 52

of bifurcating the Market Committee is quasi legislative action, but the exercise of the power under Section 54 by the State Government is purely an executive action on the part of the State Government. The bifurcation of a market committee for the objects to be achieved for the purposes of the Act to provide better facilities or near facilities to the agriculturists of the area by establishing a market committee for a market area is a different thing than that of nominating or inducting certain persons in power as the member of newly constituted market committee. As observed earlier it was required for the State Government to consider the matter after taking into consideration the express observations made by this Court and to arrive at the decision as to whether the members of the dissolved market committee should be nominated or not. However, the attempt on the part of the State Government through out has remained that since there are serious illegalities and financial irregularities, such persons cannot be nominated as the members of the market

committee. Whether on account of the charges of financial irregularities or illegalities, the members of the dissolved market committee can be nominated or not or whether the action of the State Government for not nominating such persons as members of the market committee can be justified or not, could have been examined by this Court further. However, the action can be segregated in two parts, i.e. non-nomination of the members of the dissolved market committee and the nomination of other persons as members of the market committee.

24.No justification whatsoever is made on the part of the State Government for nominating the persons concerned, whose names are mentioned in the notification as members of the market committee. Neither in the affidavit in reply, nor even in the subsequent consideration after the order dated 11.8.2006, there is any examination by the State Government on the point as to whether such persons are holding the basic qualification to be appointed as members of the

market committee, or whether they are the persons who were defeated at the election of the market committee or whether the appointment of such persons would be in the interest of the administration of newly constituted market committee or not. The original file does contain a letter dated 24.7.2006 from the Minister concerned to the Additional Principal Secretary, Cooperation Department, stating that the intention for bifurcation of the market committee is declared and the preliminary intention is to be finalized and, therefore, the representation is made before him that the process is to be undertaken for nomination of the persons in the newly constituted market committee and the list is forwarded herewith. It is mentioned in the said letter that such persons whose names are represented before him be nominated on condition of the verification of their eligibility and if the verification is found against such persons, the nomination shall remain cancelled from its inception and, therefore, the process be immediately undertaken

for such purposes. The list appended to the letter dated 24.7.2006 vide reference No.38/1364 is of the same persons who are nominated vide impugned notification of the State Government for APMC, Rajkot-Lodhika and APMC, Paddhari. It is required to be noted that in the original file the decision of division/bifurcation is approved by the State Government up to the level of the concerned Minister on 24.7.2006 i.e. from the day on which the above referred letter is addressed for nominating certain persons in the newly constituted market committee. Further, on the very day i.e. 24.7.2006 the noting was prepared for nominating the persons whose names are forwarded vide above referred letter dated 24.7.2006 without examining whatsoever about the credential of such persons or the bio-data of such persons or whether such persons are holding the basic qualifications or not or whether, in any case, appointment of such persons as nominated members is in the interest of the administration of the market committee or not. Even the impugned notification itself provides

for verification of the eligibility criteria after their appointment with the condition that if they are found illegible, their appointment shall be treated as cancelled from its inception. All such exercise shows arbitrariness on the face of it and there is no independent application of mind by the State Government on the eligibility or on the aspects of the interest of the administration of the market committee by nomination of such persons. Even if it is considered that there was suggestion made by the concerned Minister of the State Government for nominating certain persons as the members of the market committee it was required for the officer concerned who in the present case is Dy. Secretary, who has sworn the affidavit, to at least consider the matter on the ground germane to the exercise of powers to the nomination under Section 54(2) of the Act and it was not expected for him to mechanically exercise the power.

25.It deserves to be recorded that even after

considering the original file when this Court considered the matter on 11.8.2006, it was, inter alia, observed at para 8 as under:

"8. ... if the record of the original file was considered, the file did not contain any formation of the opinion by the State Government that it was not practicable to nominate the members of the dissolved Market Committee nor any material is contained in the file of division of the Market Committee. Mr. Joshi, learned Addl. Advocate General submitted that there is another file. But such another file appears to have been prepared on 08.08.2006, containing the complaint and investigation into the complaint by the Deputy Director and the District Registrar of the Rajkot and such complaint, as such are from the applicant of Civil Application Nos. 9107 of 2006, 9108 of 2006 and 9109 of 2006."

It was also further observed at para 9 as under:

"9. It deserves to be recorded that the date of the decision is 24.07.2006 of the State Government. This Court on 28.07.2006, after hearing the learned Addl. Advocate General, had passed the order of issuing notice and of granting ad-interim order and the so-called material of the file is incorporated in the file on 08.08.2006. Further, for exercise of power under Section 52 read with Section 54(2) of the Act, the approval/orders upto the level of the concerned Minister is to be obtained but the another file shown is moved upto the level of Dy. Secretary, Cooperation Department. Therefore, prima facie, it can be said as

the material not before the State Government at the time when the decision was taken on 24.07.2006.”

24.If the matter is considered strictly on the basis of the material available before the State Government on 24.7.2006, it can be said that the subsequent development on the basis of which the reliance is placed by the State Government regarding the report of financial irregularities etc., was not there before the State Government. Even if such reports are considered after the order passed by this Court dated 11.8.2006, as observed earlier on account of the non-consideration of the observations made by this Court there is non-application of mind on the part of the State Government. Had the Government considered the observations made by this Court in its order dated 11.8.2006 and thereafter found it proper not to nominate a member of the dissolved market committee on the ground of alleged financial irregularities and illegalities, the matter could have been examined differently. However, so far as the

nomination of the persons in the newly constituted market committees are concerned, there is ex facie not only non-application of mind, but the power is exercised in a mechanical manner, without considering the matter independently on the aspects of the persons to be nominated, their qualification, eligibility, the facts regarding losing on the election of the market committee individually and the interest of the administration of the newly constituted market committee. It can be said that the exercise of power by the State Government for nominating the persons whose names are mentioned in the impugned notification is in colourable exercise of power.

25. Even after the order dated 11.8.2006 while reconsidering the matter again there is no whisper whatsoever either in the noting dated 23.8.2006, nor in the discussion recorded on 2.9.2006 regarding the persons to be nominated or renominated by the impugned notification. It appears that the matter is taken by the State

Government as if that if the members of the dissolved market committee are not to be nominated, it is in the complete domain of the State Government to nominate the persons as per their pleasure doctrine irrespective of their eligibility, qualification, or the interest of the administration of the market committee at large. Even if it is read under Section 54(2) of the Act that due to the peculiar facts and circumstances, the State Government did not nominate the members of the dissolved market committee, then also the State Government is not relieved from its responsibility and obligation to consider the merits or demerits of the persons vis-a-vis the administration of the market committee while nominating such persons as the members of the market committee. Had the power exercised after the consideration of the said aspects, the matter would have been different. In the present case there is no consideration whatsoever on the said aspect and it is ex facie a mechanical exercise of the power itself through the letter dated 24.7.2006

referred to herein above, as if the State Government is desirous to see that the persons whose names are mentioned in the nomination be allowed to assume office irrespective of their qualification, eligibility or the interest of the administration of the newly constituted market committee.

26. The aforesaid is coupled with the circumstances as recorded herein above of the stand declared on the part of the State government of not ready for the election to be held of the newly constituted market committee. If the allegations made in the petitions are taken on its face value, out of the 14 elected members of the market committee, 12, the majority group, have approached this Court by preferring the petition together with the other petitioners and this shows prima facie the majority on the part of such petitioners from amongst the elected members of the dissolved market committee. It may be stated that no justification whatsoever is given on the part of the State even during

the course of the hearing for its stand of not to agree for holding of the election of the newly constituted market committee. If the attempt on the part of either political party is to see that no election should be held or to avoid only because there is no convenient atmosphere either to procure the majority from amongst the electorate or otherwise, such an attempt not only cannot be countenanced, but deserves to be condemned. The elections, when are to be held, its holding or the process of the election is not depended on the circumstances as to whether "X" or "Y" political party is in a position to procure majority or not, but the basic laudable purpose is to see that the "Will" of the electorate is reflected at the election and the representatives of the electorate are permitted to look after the administration, subject to the limitations as provided in the relevant statute. Therefore, any attempt on the part of any persons or authority to avoid election or to create an hindrance in observance of the democratic

principles cannot be leniently viewed by this Court while exercising the power under Constitution of India. The Scheme of the Act does not provide for running of the administration of the market committee through the executives, may be of the market committee itself or of the State Government, but the Scheme provides for running of the administration essentially through the representatives of the electorate. Therefore, I find that if the election of the newly constituted market committee in view of the aforesaid facts and circumstances are held at the earliest, the grievance amongst the electorate and those who are directly affected by the bifurcation of the market committee may not survive on the ground that the State Government has ousted their representatives under the purported exercise of the power of division of the market committee and has usurped the power by executive fiat and has inducted the persons, who are not holding the "Will" or "mandate" of the electorate at larger.

27. As observed earlier, if the "Will" of the majority is considered of the local bodies, Cooperative Societies and the elected Members, the record shows that the majority have objected to bifurcation. The bifurcation, though may be by the exercise of the power by the State Government for objects to be achieved for the purposes of the Act, is certainly a no valid ground to oust the elected representatives and to usurp the power by executive fiat and to induct the persons, who may be comfortable or convenient to the State Government, though holding no "Will" or "mandate" of the electorate, much less the qualification or the other aspects. The power under Section 52 with the State Government is to be exercised, though legislative function, with a pious hope to exercise for bonafide purpose to be achieved for the objects as mentioned in the Act. Therefore, I find that considering the facts and circumstances, if the election of the newly constituted market committee is held within a

stipulated time limit, the same would be in the larger interest of the persons, who are to be affected by the functioning of the market committee in the concerned market area. Consequently, this Court would not be required to finally rule on the question of legality and validity of the impugned notification so far as it relates to non-nomination of the members of the dissolved market committee and nomination of persons whose names are mentioned in Schedule A & B of the said notification. As such, the impugned notification so far it relates to nomination would not survive if the election is held and newly elected body/ies in newly constituted market committee assume offices.

28. It was submitted on behalf of the State Government that the division of the properties of the market committee may take some time and it was also submitted that the minimum 90 days' time would be required for completing various stages of the election i.e. from the date of publication of the voters' list till the results

of the election are declared and, therefore, some reasonable time may be given to the State Government or the Officers of the State Government in case this Court is not inclined to accept the contention of the State Government that the election cannot be held and is to order election.

29.As per the Scheme of the Act, including that of Section 52 read with Section 54 and 53 of the Act division of the properties amongst two market committees after bifurcation is not a condition precedent for constitution of newly constituted market committee. On the contrary, with a view to see that no vacuum is created the market committee is to be constituted and the division may be made in due course. Therefore, the constitution of the newly constituted market committee will be a step prior to its division of the properties of the dissolved market committee. If the expenses for holding of the elections are to be borne, the same can always be made available from the funds of the

dissolved market committee and the appropriation can be made thereafter at the time of distribution/division of the properties. In absence of a newly constituted market committee, it may not be even possible to acquire the properties and to look after the affairs. Even if the division of the properties to take place as per the interim order passed by this Court, the District Registrar and the Dy. Direction, Agriculture and Marketing, Rajkot is holding the charge and, in any case, the nominated committee has not been permitted to assume the office. Therefore, it would be just and proper if the elections are held of the newly constituted market committee at the earliest within a period of four months from the date of receipt of the order of this Court and the elections can be completed and the newly elected body of newly constituted market committee namely; APMC, Lodhika – Rajkot and APMC, Paddhari can assume office.

30.The learned Counsel appearing for the

petitioners submitted that even if this Court is not ultimately to strike down the action of the State Government for non-nomination of the members of the dissolved market committee or that nomination of the persons whose names are mentioned in the Schedule 1 and 2 of the Notification, and is inclined to order election within stipulated time limit, the petitioners have apprehension that the administrator, namely District Registrar who is holding the charge of the market committee for looking after its routine and day-to-day functions as per the order dated 11.8.2006 passed by this Court, may exercise the power for admission of any new member by giving fresh licence, which may result into creating artificial majority.

31. On behalf of the State Government it has been only submitted that by virtue of the interim order passed by this Court the Administrator may not be in a position to grant any licence, but with a view to see that the licence holders for Paddhari area may be required to be transferred.

32.If the effect of the order is to be given for holding election, the consequence as required under Section 55 of the Act for transfer of the licence to a particular area is permissible on account of the bifurcation and constitution of the new market committee and market area. However, it is apparent that the routine and day-to-day function would not include granting of fresh licence, but at the most may include the renewal of the licences.

33.In view of the aforesaid observations and discussion:

(A) The challenge to the impugned notification dated 24.7.2006 so far as it relates to bifurcation of APMC, Rajkot into APMC, Lodhika – Rajkot and APMC, Paddhari shall stand disposed of as not pressed in view of the direction for holding the election as stated herein after.

(B) Respondent No.2 is directed to hold the election of the newly constituted APMC, Rajkot into APMC, Lodhika – Rajkot and APMC, Paddhari by initiating the process forthwith and complete the election, including by holding of the first meeting of the elected representatives, who may be elected at the election, within a period of four months from the date of receipt of the order of this Court.

(C) In view of the aforesaid directions to hold election, the interim stay granted on 11.8.2006 qua the impugned notification of the State Government so far as it relates to nomination of the persons in APMC, Rajkot - Lodhika and APMC, Paddhari shall continue to remain in operation with the further clarification that until the election is held and the elected body assumes the office, the District Registrar and the Dy Director, Agriculture and Marketing, Rajkot shall continue to hold

the charge of both the market committees for looking after its routine and day-to-day functions with the clarification as referred to hereinabove for transfer of the licence under Section 55 of the Act or renewal of the licence, but the power for grant of fresh licence would not be exercised.

(D) The impugned notification for nomination of persons as per Schedule-A & B will not survive after the election as ordered is completed and newly elected body in both newly constituted market committees assume offices.

31.The petitions are disposed of in terms of the aforesaid directions. Rule partly made absolute accordingly. There shall be no order as to costs.

32.In view of the order passed in the main Special Civil Application, the Civil Application shall

stand disposed of accordingly.

Direct service is permitted.

(JAYANT PATEL, J.)

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